

grant of \$25,000 to N. C is a disqualified person with respect to O. C made the grant to N with the understanding that N would be bound to make a grant to O in the sum of \$25,000, in addition to a matching grant of N's funds to O in the sum of \$25,000. Only the \$25,000 received directly from N is considered a grant from N. The other \$25,000 is deemed an indirect contribution from C to O and is to be excluded from the numerator of O's support fraction.

(k) *Method of accounting.* For purposes of section 509(a)(2), an organization's support will be determined solely on the cash receipts and disbursement method of accounting described in section 446(c)(1). For example, if a grantor makes a grant to an organization payable over a term of years, such grant will be includible in the support fraction of the grantee organization only when and to the extent amounts payable under the grant are received by the grantee.

(l) *Gross receipts from section 513(a) (1), (2), or (3) activities.* For purposes of section 509(a)(2)(A)(ii), gross receipts from activities described in section 513(a) (1), (2), or (3) will be considered gross receipts from activities which are not unrelated trade or business.

(m) *Gross receipts distinguished from gross investment income.* (1) For purposes of section 509(a)(2), where the charitable purpose of an organization described in section 501(c)(3) is accomplished through the furnishing of facilities for a rental fee or loans to a particular class of persons, such as aged, sick, or needy persons, the support received from such persons will be considered *gross receipts* (within the meaning of section 509(d)(2)) from an activity which is not an unrelated trade or business, rather than *gross investment income*. However, if such organization also furnishes facilities or loans to persons who are not members of such class and such furnishing does not contribute importantly to the accomplishment of such organization's exempt purposes (aside from the need of such organization for income or funds or the use it makes of the profits derived), the support received from such furnishing will be considered *rents* or *interest* and therefore will be treated as *gross investment income* within the meaning of section 509(d)(4), unless such income is in-

cluded in computing the tax imposed by section 511.

(2) The provisions of this paragraph may be illustrated by the following example:

Example. X, an organization described in section 501(c)(3), is organized and operated to provide living facilities for needy widows of deceased servicemen. X charges such widows a small rental fee for the use of such facilities. Since X is accomplishing its exempt purpose through the rental of such facilities, the support received from the widows is considered *gross receipts* within the meaning of section 509(d)(2). However, if X rents part of its facilities to persons having no relationship to X's exempt purpose, the support received from such rental will be considered *gross investment income* within the meaning of section 509(d)(4), unless such income is included in computing the tax imposed by section 511.

(n) *Effective/applicability date.* This section shall apply to taxable years beginning after December 31, 1969. The applicability of paragraphs (a)(2), (a)(3)(i), (c), (d), (e) and (k) of this section shall be limited to taxable years beginning before January 1, 2008.

[T.D. 7212, 37 FR 21907, Oct. 17, 1972, as amended by T.D. 7784, 46 FR 37889, July 23, 1981; T.D. 8423, 57 FR 33443, July 29, 1992; T.D. 8991, 67 FR 20437, Apr. 25, 2002; T.D. 9423, 73 FR 52549, Sept. 9, 2008]

§ 1.509(a)-3T Broadly, publicly supported organizations (temporary).

(a)(1) [Reserved] For further guidance see § 1.509(a)-3(a)(1).

(2) *One-third support test.* An organization will meet the one-third support test if it normally (within the meaning of paragraph (c) or (d) of this section) receives more than one-third of its support in each taxable year from any combination of—

(i) Gifts, grants, contributions, or membership fees; and

(ii) Gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity that is not an unrelated trade or business (within the meaning of section 513), subject to certain limitations described in paragraph (b) of this section, from permitted sources. For purposes of this section, governmental units, organizations described in section 509(a)(1) and persons other than disqualified persons with respect to the organization shall be referred to

as permitted sources. For purposes of this section, the amount of support received from the sources described in paragraph (a)(2)(i) of this section and this paragraph (a)(2)(ii) (subject to the limitations referred to in this paragraph (a)(2)) will be referred to as the numerator of the one-third support fraction, and the total amount of support received (as defined in section 509(d)) will be referred to as the denominator of the one-third support fraction. For purposes of section 509(a)(2), § 1.509(a)–3(f) distinguishes gifts and contributions from gross receipts; § 1.509(a)–3(g) distinguishes grants from gross receipts; § 1.509(a)–3(h) defines membership fees; § 1.509(a)–3(i) defines “any bureau or similar agency of a governmental unit”; § 1.509(a)–3(j) describes the treatment of certain indirect forms of support; paragraph (k) of this section describes the method of accounting for support; § 1.509(a)–3(l) describes the treatment of gross receipts from section 513(a)(1), (2), or (3) activities; and § 1.509(a)–3(m) distinguishes gross receipts from gross investment income.

(3) *Not-more-than-one-third support test*—(i) *In general.* An organization will meet the not-more-than-one-third support test under section 509(a)(2)(B) if it normally (within the meaning of paragraph (c) or (d) of this section) receives not more than one-third of its support in each taxable year from the sum of its gross investment income (as defined in section 509(e)) and the excess (if any) of the amount of its unrelated business taxable income (as defined in section 512) derived from trades or businesses that were acquired by the organization after June 30, 1975, over the amount of tax imposed on such income by section 511. For purposes of this section the amount of support received from items described in section 509(a)(2)(B) will be referred to as the numerator of the not-more-than-one-third support fraction, and the total amount of support (as defined in section 509(d)) will be referred to as the denominator of the not-more-than-one-third support fraction. For purposes of section 509(a)(2), paragraph (m) of this section distinguishes gross receipts from gross investment income. For purposes of section 509(e), gross investment income in-

cludes the items of investment income described in § 1.512(b)–1(a).

(a)(3)(ii) through (b) [Reserved] For further guidance, see § 1.509(a)–3(a)(3)(ii) through (b).

(c) *Normally*—(1) *In general*—(i) *Definition.* The support tests set forth in section 509(a)(2) are to be computed on the basis of the nature of the organization’s normal sources of support. An organization will be considered as normally receiving one third of its support from any combination of gifts, grants, contributions, membership fees, and gross receipts from permitted sources (subject to the limitations described in § 1.509(a)–3(b)) and not more than one third of its support from items described in section 509(a)(2)(B) for its current taxable year and the taxable year immediately succeeding its current year, if, for the current taxable year and the four taxable years immediately preceding the current taxable year, the aggregate amount of the support received during the applicable period from gifts, grants, contributions, membership fees, and gross receipts from permitted sources (subject to the limitations described in § 1.509(a)–3(b)) is more than one third, and the aggregate amount of the support received from items described in section 509(a)(2)(B) is not more than one third, of the total support of the organization for such 5-year period.

(ii) *First five years of an organization’s existence.* See paragraph (d)(1) of this section for the definition of “normally” for organizations in the first five years of their existence.

(2) *Terminations under section 507(b)(1)(B).* For the special rules applicable to the term normally as applied to private foundations that elect to terminate their private foundation status pursuant to the 60-month procedure provided in section 507(b)(1)(B), see the regulations under such section.

(3) *Exclusion of unusual grants.* For purposes of applying the 5-year aggregation test for support set forth in paragraph (c)(1) of this section, one or more contributions may be excluded from the numerator of the one-third support fraction and from the denominator of both the one-third support and not-more-than-one-third support fractions only if such a contribution meets

the requirements of this paragraph (c)(3). The exclusion provided by this paragraph (c)(3) is generally intended to apply to substantial contributions and bequests from disinterested parties, which contributions or bequests—

(i) Are attracted by reason of the publicly supported nature of the organization;

(ii) Are unusual or unexpected with respect to the amount thereof; and

(iii) Would by reason of their size, adversely affect the status of the organization as normally meeting the one-third support test for any of the applicable periods described in this paragraph (c) or paragraph (d) of this section. In the case of a grant (as defined in § 1.509(a)-3(g)) that meets the requirements of this paragraph (c)(3), if the terms of the granting instrument (whether executed before or after 1969) require that the funds be paid to the recipient organization over a period of years, the amount received by the organization each year pursuant to the terms of such grant may be excluded for such year. However, no item described in section 509(a)(2)(B) may be excluded under this paragraph (c)(3). The provisions of this paragraph (c)(3) shall apply to exclude unusual grants made during any of the applicable periods described in this paragraph (c) or paragraph (d) of this section. See paragraph (c)(5)(ii) of this section as to reliance by a grantee organization upon an unusual grant ruling under this paragraph (c)(3).

(4) *Determining factors.* In determining whether a particular contribution may be excluded under paragraph (c)(3) of this section, all pertinent facts and circumstances will be taken into consideration. No single factor will necessarily be determinative. Among the factors to be considered are—

(i) Whether the contribution was made by any person (or persons standing in a relationship to such person which is described in section 4946(a)(1)(C) through (G)) who created the organization, previously contributed a substantial part of its support or endowment, or stood in a position of authority, such as a foundation manager (within the meaning of section 4946(b)), with respect to the organization. A contribution made by a person

other than those persons described in this paragraph (c)(4)(i) will ordinarily be given more favorable consideration than a contribution made by a person described in this paragraph (c)(4)(i);

(ii) Whether the contribution was a bequest or an inter vivos transfer. A bequest will ordinarily be given more favorable consideration than an inter vivos transfer;

(iii) Whether the contribution was in the form of cash, readily marketable securities, or assets which further the exempt purposes of the organization, such as a gift of a painting to a museum;

(iv) Except in the case of a new organization, whether, prior to the receipt of the particular contribution, the organization has carried on an actual program of public solicitation and exempt activities and has been able to attract a significant amount of public support;

(v) Whether the organization may reasonably be expected to attract a significant amount of public support subsequent to the particular contribution. In this connection, continued reliance on unusual grants to fund an organization's current operating expenses (as opposed to providing new endowment funds) may be evidence that the organization cannot reasonably be expected to attract future support from the general public;

(vi) Whether, prior to the year in which the particular contribution was received, the organization met the one-third support test described in paragraph (c)(1) of this section without the benefit of any exclusions of unusual grants pursuant to paragraph (c)(3) of this section;

(vii) Whether neither the contributor nor any person standing in a relationship to such contributor which is described in section 4946(a)(1)(C) through (G) continues directly or indirectly to exercise control over the organization;

(viii) Whether the organization has a representative governing body as described in § 1.509(a)-3(d)(3)(i); and

(ix) Whether material restrictions or conditions (within the meaning of § 1.507-2T(a)(7)) have been imposed by the transferor upon the transferee in connection with such transfer.

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(5) *Grantors and contributors.* Prior to the making of any grant or contribution expected to meet the requirements for exclusion under paragraph (c)(3) of this section, a potential grantee organization may request a ruling whether such grant or contribution may be so excluded. Requests for such ruling may be filed by the grantee organization. The issuance of such determination will be at the sole discretion of the Commissioner. The organization must submit all information necessary to make a determination of the applicability of paragraph (c)(3) of this section, including all information relating to the factors described in paragraph (c)(4) of this section. If a favorable ruling is issued, such ruling may be relied upon by the grantor or contributor of the particular contribution in question for purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522 and by the grantee organization for purposes of paragraph (c)(3) of this section.

(6) *Examples.* The application of the principles set forth in this paragraph are illustrated by the examples as follows. For purposes of these examples, the term *general public* is defined as persons other than disqualified persons and other than persons from whom the foundation received gross receipts in excess of the greater of \$5,000 or 1 percent of its support in any taxable year, the term *gross investment income* is as defined in section 509(e), and the term *gross receipts* is limited to receipts from activities which are not unrelated trades or businesses (within the meaning of section 513).

Example 1. (i) For the years 2008 through 2012, X, an organization exempt under section 501(c)(3) that makes scholarship grants to needy students of a particular city, received support from the following sources:

2008:	
Gross receipts (general public)	\$35,000
Contributions (substantial contributors)	36,000
Gross investment income	29,000
Total support	100,000
2009:	
Gross receipts (general public)	34,000

Contributions (substantial contributors)	35,000
Gross investment income	31,000
Total support	100,000
2010:	
Gross receipts (general public)	35,000
Contributions (substantial contributors)	30,000
Gross investment income	35,000
Total support	100,000
2011:	
Gross receipts (general public)	33,000
Contributions (substantial contributors)	32,000
Gross investment income	35,000
Total support	100,000
2012:	
Gross receipts (general public)	31,000
Contributions (substantial contributors)	39,000
Gross investment income	30,000
Total support	\$100,000

(ii) In applying section 509(a)(2) to the taxable year 2012, on the basis of paragraph (c)(1)(i) of this section, the total amount of support from gross receipts from the general public (\$168,000) for the period 2008 through 2012, was more than one third, and the total amount of support from gross investment income (\$160,000) was less than one third, of X's total support for the same period (\$500,000). For the taxable years 2012 and 2013, X is therefore considered normally to receive more than one third of its support from the public sources described in section 509(a)(2)(A) and less than one third of its support from items described in section 509(a)(2)(B). The fact that X received less than one third of its support from section 509(a)(2)(A) sources in 2012 and more than one third of its support from items described in section 509(a)(2)(B) in 2011 does not affect its status because it met the normally test over a 5-year period.

Example 2. Assume the same facts as in *Example 1* except that in 2012, X also received an unexpected bequest of \$50,000 from A, an elderly widow who was interested in encouraging the work of X, but had no other relationship to it. Solely by reason of the bequest, A became a disqualified person. X used

the bequest to create 5 new scholarships. Its operations otherwise remained the same. Under these circumstances X could not meet the 5-year support test because the total amount received from gross receipts from the general public (\$168,000) would not be more than one-third of its total support for the 5-year period (\$550,000). Because A is a disqualified person, her bequest cannot be included in the numerator of the one-third support test under section 509(a)(2)(A). However, based on the factors set forth in paragraph (c)(4) of this section, A's bequest may be excluded as an unusual grant under paragraph (c)(3) of this section. Therefore, X will be considered to have met the support test for the taxable years 2012 and 2013.

Example 3. Y, an organization described in section 501(c)(3), was created by A, the holder of all the common stock in M corporation, B, A's wife, and C, A's business associate. The purpose of Y was to sponsor and equip athletic teams for underprivileged children in the community. Each of the three creators makes small cash contributions to Y. A, B, and C have been active participants in the affairs of Y since its creation. Y regularly raises small amounts of contributions through fundraising drives and selling admission to some of the sponsored sporting events. The operations of Y are carried out on a small scale, usually being restricted to the sponsorship of two to four baseball teams of underprivileged children. In 2009, M recapitalizes and creates a first and second class of 6 percent nonvoting preferred stock, most of which is held by A and B. In 2010, A contributes 49 percent of his common stock in M to Y. A's contribution of M's common stock was substantial and constitutes 90 percent of Y's total support for 2010. A combination of the facts and circumstances described in paragraph (c)(4) of this section preclude A's contribution of M's common stock in 2010 from being excluded as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether Y meets the one-third support test under section 509(a)(2).

Example 4. (i) M is organized in 2009 to promote the appreciation of ballet in a particular region of the United States. Its principal activities consist of erecting a theater for the performance of ballet and the organization and operation of a ballet company. M receives a determination letter that it is an organization described in section 501(c)(3) and that it is a public charity described in section 509(a)(2). The governing body of M consists of 9 prominent unrelated citizens residing in the region who have either an expertise in ballet or a strong interest in encouraging appreciation of the art form.

(ii) In 2010, Z, a private foundation, proposes to make a grant of \$500,000 in cash to M to provide sufficient capital for M to commence its activities. Although A, the creator of Z, is one of the nine members of M's gov-

erning body, was one of M's original founders, and continues to lend his prestige to M's activities and fund raising efforts, A does not, directly or indirectly, exercise any control over M. M also receives a significant amount of support from a number of smaller contributions and pledges from other members of the general public. M charges admission to the ballet performances to the general public.

(iii) Although the support received in 2010 will not impact M's status as a public charity for its first 5 taxable years, it will be relevant to the determination of whether M meets the one-third support test under section 509(a)(2) for the 2014 taxable year, using the computation period 2010 through 2014. Within the appropriate timeframe, M may submit a request for a private letter ruling that the \$500,000 contribution from Z qualifies as an unusual grant.

(iv) Under the above circumstances, even though A was a founder and member of the governing body of M, M may exclude Z's contribution of \$500,000 in 2010 as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether M meets the one-third support test under section 509(a)(2) for 2014.

Example 5. (i) Assume the same facts as *Example 4*. In 2013, B, a widow, passes away and bequeaths \$4 million to M. During 2009 through 2013, B made small contributions to M, none exceeding \$10,000 in any year. During 2009 through 2013, M received approximately \$550,000 from receipts for admissions and contributions from the general public. At the time of B's death, no person standing in a relationship to B described in section 4946(a)(1)(C) through (G) was a member of M's governing body. B's bequest was in the form of cash and readily marketable securities. The only condition placed upon the bequest was that it be used by M to advance the art of ballet.

(ii) Although the support received in 2013 will not impact M's status as a public charity for its first five taxable years, it will be relevant to the determination of whether M meets the one-third support test under section 509(a)(2) for future years. Within the appropriate timeframe, M may submit a request for a private letter ruling that the \$4 million bequest from B qualifies as an unusual grant.

(iii) Under the above circumstances, M may exclude B's bequest of \$4 million in 2013 as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether M meets the one-third support test under section 509(a)(2) for 2014 and subsequent years.

Example 6. (i) N is a research organization that was created by A in 2009 for the purpose of carrying on economic studies primarily through persons receiving grants from N and

engaging in the sale of economic publications. N received a determination letter that it is described in section 501(c)(3) and that it is a public charity described in 509(a)(2). N's five-member governing body consists of A, A's sons, B and C, and two unrelated economists. In 2009, A made a contribution to N of \$100,000 to help establish the organization. During 2009 through 2013, A made annual contributions to N averaging \$20,000 a year. During the same period, N received annual contributions from members of the general public averaging \$15,000 per year and receipts from the sale of its publications averaging \$50,000 per year. In 2013, B made an inter vivos contribution to N of \$600,000 in cash and readily marketable securities.

(ii) Although the support received in 2013 will not impact N's status as a public charity for its first 5 taxable years, it will be relevant to the determination of whether N meets the one-third support test under section 509(a)(2) for future years. In determining whether B's contribution of \$600,000 in 2013 may be excluded as an unusual grant, the support N received in 2009 through 2013 is relevant in considering the factor described in paragraph (c)(4)(vi) of this section, notwithstanding that N received a determination letter that it is described in section 509(a)(2).

(iii) Based on the application of the factors in paragraphs (c)(4)(i) through (ix) of this section to N's circumstances, in particular the facts that B is a disqualified person described in section 4946(a)(1)(D) and N does not have a representative governing body as described in paragraphs (c)(4)(viii) and (d)(3)(i) of this section, N cannot exclude B's contribution of \$600,000 in 2013 as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether N meets the one-third support test under section 509(a)(2) for 2014 and future years.

Example 7. (i) O is an educational organization created in 2009. O received a determination letter that it is described in section 501(c)(3) and that it is a public charity described in section 509(a)(2). The governing body of O has 9 members, consisting of A, a prominent civic leader and 8 other unrelated civic leaders and educators in the community, all of whom participated in the creation of O. During 2009 through 2013, the principal source of income for O has been receipts from the sale of its educational periodicals. These sales have amounted to \$200,000 for this period. Small contributions amounting to \$50,000 have also been received during the same period from members of the governing body, including A, as well as other members of the general public.

(ii) In 2013, A contributed \$750,000 of the nonvoting stock of S, a closely held corporation, to O. A retained a substantial portion of the voting stock of S. By a majority vote, the governing body of O decided to retain the S stock for a period of at least 5 years.

(iii) Although the support received in 2013 will not impact O's status as a public charity for its first 5 taxable years, it will be relevant to the determination of whether O meets the one-third support test under section 509(a)(2) for future years. In determining whether A's contribution of the S stock in 2013 may be excluded as an unusual grant, the support O received in 2009 through 2013 is relevant in considering the factor described in paragraph (c)(4)(vi) of this section, notwithstanding that O received a determination letter that it is described in section 509(a)(2).

(iv) Based on the application of the factors in paragraphs (c)(4)(i) through (ix) of this section to O's circumstances, in particular the facts that A is a foundation manager within the meaning of section 4946(b) and A's contribution is in the form of closely held stock, O cannot exclude A's contribution of the S stock in 2013 as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether O meets the one-third support test under section 509(a)(2) for 2014 and future years.

(d) *Definition of normally—first five years of an organization's existence—(1) In general.* An organization meets the one-third support test and the not-more-than-one-third support test during its first five taxable years as a section 501(c)(3) organization if the organization can reasonably be expected to meet the requirements of the one-third support test and the not-more-than-one-third support test during that period. With respect to such organization's sixth taxable year, the organization shall be described in section 509(a)(2) if it meets the one-third support test and the not-more-than-one-third support test under the definition of normally set forth in paragraph (c)(1)(i) of this section for its sixth taxable year (based on support received in its second through sixth taxable years), or for its fifth taxable year (based on support received in its first through fifth taxable years).

(2) *Basic consideration.* In determining whether an organization can reasonably be expected (within the meaning of paragraph (c)(1)(i) of this section) to meet the one-third support test under section 509(a)(2)(A) and the not-more-than-one-third support test under section 509(a)(2)(B) described in paragraph (c) of this section during its first 5 taxable years, the basic consideration is whether its organizational structure,

current or proposed programs or activities, and actual or intended method of operation are such as to attract the type of broadly based support from the general public, public charities, and governmental units that is necessary to meet such tests. The factors that are relevant to this determination, and the weight accorded to each of them, may differ from case to case, depending on the nature and functions of the organization. An organization cannot reasonably be expected to meet the one-third support test and the not-more-than-one-third support test where the facts indicate that an organization is likely during its first five taxable years to receive less than one-third of its support from permitted sources (subject to the limitations of paragraph (b) of this section) or to receive more than one-third of its support from items described in section 509(a)(2)(B).

(3) *Factors taken into account.* All pertinent facts and circumstances shall be taken into account under paragraph (d)(2) of this section in determining whether the organizational structure, programs or activities, and method of operation of an organization are such as to enable it to meet the tests under section 509(a)(2) during its first five taxable years. Some of the pertinent factors are:

(i) Whether the organization has or will have a governing body which is comprised of public officials, or individuals chosen by public officials acting in their capacity as such, of persons having special knowledge in the particular field or discipline in which the organization is operating, of community leaders, such as elected officials, clergymen, and educators, or, in the case of a membership organization, of individuals elected pursuant to the organization's governing instrument or bylaws by a broadly based membership. This characteristic does not exist if the membership of the organization's governing body is such as to indicate that it represents the personal or private interests of disqualified persons, rather than the interests of the community or the general public.

(ii) Whether a substantial portion of the organization's initial funding is to be provided by the general public, by

public charities, or by government grants, rather than by a limited number of grantors or contributors who are disqualified persons with respect to the organization. The fact that the organization plans to limit its activities to a particular community or region or to a special field which can be expected to appeal to a limited number of persons will be taken into consideration in determining whether those persons providing the initial support for the organization are representative of the general public. On the other hand, the subsequent sources of funding which the organization can reasonably expect to receive after it has become established and fully operational will also be taken into account.

(iii) Whether a substantial proportion of the organization's initial funds are placed, or will remain, in an endowment, and whether the investment of such funds is unlikely to result in more than one-third of its total support being received from items described in section 509(a)(2)(B).

(iv) In the case of an organization that carries on fundraising activities, whether the organization has developed a concrete plan for solicitation of funds from the general public on a community or area-wide basis; whether any steps have been taken to implement such plan; whether any firm commitments of financial or other support have been made to the organization by civic, religious, charitable, or similar groups within the community; and whether the organization has made any commitments to, or established any working relationships with, those organizations or classes of persons intended as the future recipients of its funds.

(v) In the case of an organization that carries on community services, such as combating community deterioration in an economically depressed area that has suffered a major loss of population and jobs, whether the organization has a concrete program to carry out its work in the community; whether any steps have been taken to implement that program; whether it will receive any part of its funds from a public charity or governmental agency to which it is in some way held accountable as a condition of the grant

or contribution; and whether it has enlisted the sponsorship or support of other civic or community leaders involved in community service programs similar to those of the organization.

(vi) In the case of an organization that carries on educational or other exempt activities for, or on behalf of, members, whether the solicitation for dues-paying members is designed to enroll a substantial number of persons in the community, area, profession, or field of special interest (depending on the size of the area and the nature of the organization's activities); whether membership dues for individual (rather than institutional) members have been fixed at rates designed to make membership available to a broad cross-section of the public rather than to restrict membership to a limited number of persons; and whether the activities of the organization will be likely to appeal to persons having some broad common interest or purpose, such as educational activities in the case of alumni associations, musical activities in the case of symphony societies, or civic affairs in the case of parent-teacher associations.

(vii) In the case of an organization that provides goods, services, or facilities, whether the organization is or will be required to make its services, facilities, performances, or products available (regardless of whether a fee is charged) to the general public, public charities, or governmental units, rather than to a limited number of persons or organizations; whether the organization will avoid executing contracts to perform services for a limited number of firms or governmental agencies or bureaus; and whether the service to be provided is one which can be expected to meet a special or general need among a substantial portion of the general public.

(4) *Example.* The application of this paragraph (d) may be illustrated by the following example:

Example. (i) Organization X was formed in January 2008 and uses a December 31 taxable year. After September 9, 2008, and before December 31, 2008, Organization X filed Form 1023 requesting recognition of exemption as an organization described in section 501(c)(3) and in section 509(a)(2). In its application, Organization X established that it can reasonably be expected to operate as a public

charity under this paragraph (d). Subsequently, Organization X received a ruling or determination letter that it is an organization described in sections 501(c)(3) and 509(a)(2) effective as of the date of its formation.

(ii) Organization X is described in section 509(a)(2) for its first 5 taxable years (for the taxable years ending December 31, 2008, through December 31, 2012).

(iii) Organization X can qualify as a public charity beginning with the taxable year ending December 31, 2013, if Organization X can meet the requirements of § 1.170A–9T(f)(4)(i) through (iii) or paragraphs (a) through (b) of this section for the taxable years ending December 31, 2009, through December 31, 2013, or for the taxable years ending December 31, 2008, through December 31, 2012.

(e) *Determinations on foundation classification and reliance.* (1) A ruling or determination letter that an organization is described in section 509(a)(2) may be issued to an organization. Such determination may be made in conjunction with the recognition of the organization's tax-exempt status or at such other time as the organization believes it is described in section 509(a)(2). The ruling or determination letter that the organization is described in section 509(a)(2) may be revoked if, upon examination, the organization has not met the requirements of this section. The ruling or determination letter that the organization is described in section 509(a)(2) also may be revoked if the organization's application for a ruling or determination contained one or more material misstatements of fact or such application was part of a scheme or plan to avoid or evade any provision of the Internal Revenue Code. The revocation of the determination that an organization is described in section 509(a)(2) does not preclude revocation of the determination that the organization is described in section 501(c)(3).

(2) *Status of grantors or contributors.* For purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, grantors and contributors may rely upon a determination letter or ruling that an organization is described in section 509(a)(2) until the Internal Revenue Service publishes notice of a change of status (for example, in the Internal Revenue Bulletin or Publication 78, "Cumulative List of Organizations described

in Section 170(c) of the Internal Revenue Code of 1986," which can be searched at *www.irs.gov*). For this purpose, grantors or contributors may also rely on an advance ruling that expires on or after June 9, 2008. However, a grantor or contributor may not rely on such an advance ruling or any determination letter or ruling if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's loss of classification under section 509(a)(2) or acquired knowledge that the Internal Revenue Service had given notice to such organization that it would be deleted from such classification.

(3) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples:

Example 1. Y, a calendar year organization described in section 501(c)(3), is created in February 2008 for the purpose of displaying African art. On its exemption application Y shows, under penalties of perjury, that it can reasonably, in accordance with the requirements of paragraph (d) of this section, expect to receive support from the public in 2008 through 2012 that will satisfy the one-third support and not-more-than-one-third support tests described in section 509(a)(2) for its first 5 taxable years, 2008 through 2012. Y may therefore receive a determination that it meets the requirements of paragraph (a) of this section. Pursuant to such determination, Y will be a public charity for its first five taxable years (2008, 2009, 2010, 2011, and 2012), regardless of the public support Y in fact receives during this period.

Example 2. Z, a calendar year organization described in section 501(c)(3), is created in July 2008. On its exemption application Z shows, under penalties of perjury, that it can reasonably, in accordance with the requirements of paragraph (d) of this section, expect to receive support from the public in 2008 through 2012 that will satisfy the one-third support and not-more-than-one-third support tests described in section 509(a)(2) for its first 5 taxable years, 2008 through 2012. Z receives a determination that it is described in section 509(a)(2). However, the support actually received from the public over Z's first 5 taxable years (2008 through 2012) does not satisfy the one-third support and not-more-than-one-third support tests described in section 509(a)(2), nor does the support Z receives from 2009 through and including its sixth taxable year, 2013, meet the one-third support and not-more-than-one-third support tests described in section 509(a)(2). Z is described in section 509(a)(2) during its first five years for all purposes. But, because Z has not met the requirements of paragraph

(a) of this section either for 2008 through 2012 or 2009 through 2013, Z is not described in section 509(a)(2) for its taxable year 2013. If Z is not described in section 509(a)(1), (3), or (4), then Z is a private foundation as of 2013, and Z will be treated as a private foundation for all purposes (except as provided in paragraph (e)(2) of this section with respect to grantors and contributors).

(f) through (j) [Reserved] For further guidance, see § 1.509(a)-3(f) through (j).

(k) *Method of accounting.* For purposes of section 509(a)(2), an organization's support will be determined under the method of accounting on the basis of which the organization regularly computes its income in keeping its books under section 446. For example, if a grantor makes a grant to an organization payable over a term of years, such grant will be includible in the support fraction of the grantee organization under the method of accounting on the basis of which it regularly computes its income in keeping its books under section 446.

(l) and (m) [Reserved] For further guidance, see § 1.509(a)-3(l) and (m).

(n) *Transition rules.* (i) An organization that received an advance ruling, that expires on or after June 9, 2008, that it will be treated as an organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2) will be treated as meeting the requirements of paragraph (d)(1) of this section for the first five taxable years of its existence as a section 501(c)(3) organization unless the Internal Revenue Service issued to the organization a proposed determination prior to September 9, 2008, that the organization is not described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2).

(ii) Paragraph (d)(1) of this section shall not apply to an organization that received an advance ruling that expired prior to June 9, 2008, and that did not timely file with the Internal Revenue Service the required information to establish that it is an organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2).

(iii) An organization that fails to meet a public support test for its first taxable year beginning on or after January 1, 2008, under the regulations in this section may use the prior test set forth in § 1.509(a)-3(c)(1) or § 1.170A-

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9(e)(4)(i) or (ii) as in effect before September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) to determine whether the organization may be publicly supported for its 2008 taxable year based on its satisfaction of a public support test for taxable year 2007, computed over the period 2003 through 2006.

(iv) *Examples.* The application of this paragraph (n) may be illustrated by the following examples:

Example 1. (i) Organization M was formed in January 2004, and uses a June 30 taxable year. Organization M received an advance ruling letter that it is recognized as an organization described in section 501(c)(3) effective as of the date of its formation and that it is treated as a public charity under section 509(a)(2) during the five-year advance ruling period that will end on June 30, 2008. This date is within 90 days before September 9, 2008.

(ii) Under the transition rule, Organization M is a public charity described in section 509(a)(2) for the taxable years ending June 30, 2004, through June 30, 2008. Organization M does not need to establish within 90 days after June 30, 2008, that it met a public support test under § 1.170A-9(e) or § 1.509(a)-3, as in effect prior to September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) for its advance ruling period.

(iii) Organization M can qualify as a public charity beginning with the taxable year ending June 30, 2009, if Organization M can meet the requirements of § 1.170A-9T(f)(4)(i) or (ii) or paragraph (c)(1) of this section for the taxable years ending June 30, 2005, through June 30, 2009, or for the taxable years ending June 30, 2004, through June 30, 2008. In addition, for its taxable year ending June 30, 2009, Organization M may qualify as a public charity by availing itself of the transition rule contained in paragraph (n)(iii) of this section, which looks to support received by M in the taxable years ending June 30, 2004, through June 30, 2007.

Example 2. (i) Organization N was formed in January 2000 and uses a December 31 taxable year. Organization N received a final determination that it was recognized as tax-exempt under section 501(c)(3) and as a public charity prior to September 9, 2008.

(ii) For taxable year 2008, Organization N will qualify as publicly supported if it meets the requirements under either § 1.170A-9T(f)(4)(i) or (ii) or paragraph (c)(1) of this section for the five-year period January 1, 2004, through December 31, 2008. Organization N will also qualify as publicly supported for taxable year 2008 if it meets the requirements under either § 1.170A-9(e)(4)(i) or (ii) or § 1.509(a)-3(c)(1) as in effect prior to September 9, 2008, (as contained in 26 CFR part

1 revised April 1, 2008) for taxable year 2007, using the four-year period from January 1, 2003, through December 31, 2006.

(o) *Effective/applicability date.*—(1) *Effective date.* These regulations are effective on September 9, 2008.

(2) *Applicability date.* The regulations in paragraphs (a)(2), (a)(3)(i), (c), (d), (e) and (k) of this section shall apply to taxable years beginning on or after January 1, 2008.

(3) *Expiration date.* The applicability of this section expires on September 8, 2011.

[T.D. 9423, 73 FR 52549, Sept. 9, 2008]

§ 1.509(a)-4 Supporting organizations.

(a) *In general.* (1) Section 509(a)(3) excludes from the definition of *private foundation* those organizations which meet the requirements of subparagraphs (A), (B), and (C) thereof.

(2) Section 509(a)(3)(A) provides that a section 509(a)(3) organization must be organized, and at all times thereafter operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in section 509(a) (1) or (2). Section 509(a)(3)(A) describes the nature of the support or benefit which a section 509(a)(3) organization must provide to one or more section 509(a) (1) or (2) organizations. For purposes of section 509(a)(3)(A), paragraph (b) of this section generally describes the organizational and operational tests; paragraph (c) of this section describes permissible purposes under the organizational test; paragraph (d) of this section describes the requirement of supporting or benefiting one or more *specified* publicly supported organizations; and paragraph (e) of this section describes permissible beneficiaries and activities under the operational test.

(3) Section 509(a)(3)(B) provides that a section 509(a)(3) organization must be operated, supervised, or controlled by or in connection with one or more organizations described in section 509(a) (1) or (2). Section 509(a)(3)(B) and paragraph (f) of this section describe the nature of the relationship which must exist between the section 509(a)(3) and section 509(a) (1) or (2) organizations. For purposes of section 509(a)(3)(B),